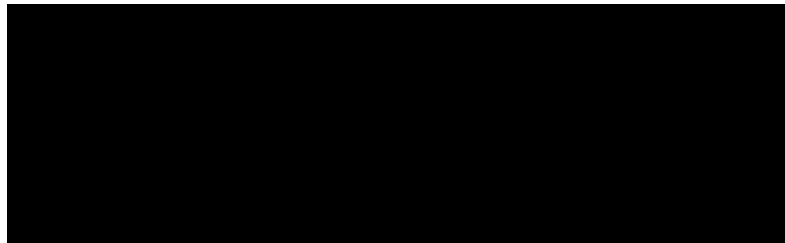


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Washington, DC 20536

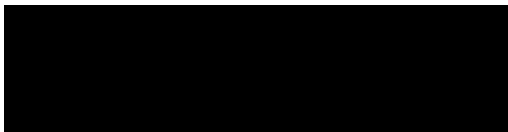


U.S. Citizenship
and Immigration
Services



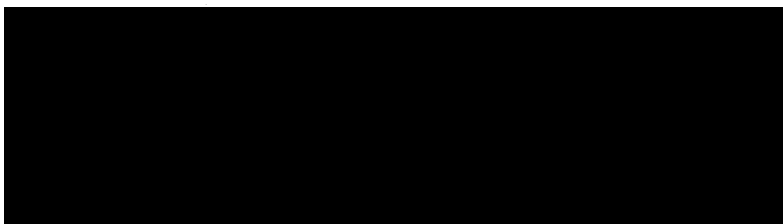
FILE: WAC 02 164 52414 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a trucking company that seeks to employ the beneficiary as a training and development specialist. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform duties in a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a training and development specialist. Evidence of the beneficiary's duties includes: the Form I-129; the job posting; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: developing, administering, and implementing a program involving the care of produce; and training employees about how to load a truck properly and efficiently, scale the truck, slide the tandems effectively, and evaluate the condition of the produce. The petitioner stated that a candidate must possess a bachelor's degree in education, organizational development, agriculture, or a related field and two years of experience.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director determined that the duties of the proffered position resemble those performed by a training specialist. Nonetheless, the director concluded that the *Handbook* reveals that employers prefer - but do not require - a bachelor's degree for this position. In addition, the director found that the submitted Internet postings carry no probative value because they represent organizations that differ from the petitioning entity. Finally, the director concluded that the beneficiary is not qualified to perform the duties of a specialty occupation.

On appeal, counsel states that the director misinterprets the law. According to counsel, the evidence and the delineated job description establish that the job is so specialized and complex, requiring a bachelor's degree for entry into the position. According to counsel, the beneficiary will be responsible for 120 drivers and 65 trucks, and in addition, must be knowledgeable about the trucking business, driving large trucks, and transporting perishable produce. With respect to the submitted Internet postings, counsel contends that neither the statute nor the regulations require that the petitioner establish that the petitioning entity is similar in operations, number of employees, and annual income to the companies in the postings. In addition, counsel avers that had the director performed an investigation of the companies, the director would have learned that some of the companies are similar to the petitioning entity. Counsel claims that the regulations allow for - and the petitioner has proven - that its position is so complex or unique that it can be performed only by an individual with a degree. Counsel submits a letter that would demonstrate that trucking companies with similar characteristics hire only training and development specialists possessing at least a bachelor's degree or higher. Last, counsel states that the position is newly created.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The 2004-2005 edition of the *Handbook* is instructive in determining the duties and educational requirements of particular occupations. A review of the *Handbook* discloses that the duties of the proffered position do not rise to the level of a training specialist position that would require a bachelor's degree in a specific specialty. The *Handbook* explains that because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

According to the evidence in the record, the petitioner seeks to have the beneficiary develop and implement a program that teaches employees about handling and loading perishable produce for transportation. The AAO finds that there is no evidence in the record that demonstrates that the duties of the proffered position are either of a high level of responsibility or complex or technical in nature. The proposed training program simply endeavors to teach employees about properly storing perishable produce for transport. No evidence points to the position as requiring a precise and specific course of study in human resources, personnel, training, labor and industrial relations, or a specific technical or business degree. In fact, the petitioner's bachelor's requirement confirms that it does not require a bachelor's degree in a precise and specific course of study given that the petitioner accepts degrees in broad disciplines such as education, agriculture, and organizational development. The proffered position, therefore, does not require knowledge, both theoretical and applied, which is almost exclusively obtained through baccalaureate studies in a specific specialty. As previously mentioned, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Accordingly, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The second criterion requires that the petitioner establish that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel contends that neither the statute nor the regulations require that the petitioner demonstrate that the petitioning entity is similar in operation, number of employees, and annual income to the companies in the postings. In addition, counsel avers that had the director performed an investigation of the organizations, the director would have learned that some of the companies are similar to the petitioning entity.

Counsel's assertions are unpersuasive. In the first place, the regulation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) plainly states that a petitioner must establish "the degree requirement is common to the industry in parallel positions among similar organizations." Where the language of a statute is clear on its face, there is no need to inquire into Congressional intent. *INS v. Phinpathya*, 464 U.S. 183 (1984); *Shaar v. INS*, 141 F.3d 953, 956 (9th Cir. 1988); *Matter of Lemhammad*, 20 I&N Dec. 316 (BIA 1991).

Second, the submitted Internet postings and letter from A2B4U – Trucking from point A to point B for You are insufficient to establish the second criterion. Of the six postings four do not require a bachelor's degree in a specific specialty. None of the postings indicate that the organizations seeking candidates are in a similar industry. With respect to the letter, because it does not define the duties of its training and development specialist, the AAO cannot determine whether the position is similar to the proffered position. Nor does the letter state that a bachelor's degree in a specific specialty is required for the position. In addition, the letter is unclear as to whether A2B4U actually employs a training and development specialist given that the letter writer stated "[i]n the past we have found it very helpful to hire a consultant to come in to train and to work with us in planning programs for our drivers."

Next, the AAO finds that no evidence substantiates counsel's claim that the petitioner has established that its position is so complex or unique that it can be performed only by an individual. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Because the position is newly created, there is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As previously discussed, the job description as delineated by the petitioner is neither of a high level of responsibility or specialized and complex in nature. Moreover, the petitioner accepts bachelor's degrees in broad disciplines. As such, there is no evidence in the record that would establish the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.